

# MINUTES

## Government Operations & Audit Committee

Senator Deb Peters, Chair

Representative Jean Hunhoff, Vice Chair



**Eighth Meeting, 2017 Interim  
Monday, December 18, 2017**

**Room 362 – State Capitol  
Pierre, South Dakota**

The eighth meeting of the 2017 Interim Government Operations and Audit Committee (Committee) was called to order by Chair Peters at 8:00 a.m., December 18, 2017, in room 362, State Capitol Building, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Representatives Steinhauer, Bartels, Anderson, Hunhoff and Senators Nelson, Cronin and Peters. Representative Wismer and Senator Sutton joined by conference call. Senator Tapio joined after roll was called.

Staff members present were Mr. Martin Guindon, Auditor General and Mr. Tim Flannery, State Government Audit Manager for the Department of Legislative Audit (DLA).

*NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. The bulleted items below each agenda item are documents sent out by the Committee.*

### **Approval of Minutes**

Representative Hunhoff moved, seconded by Representative Steinhauer, to amend the draft minutes by moving the last paragraph on page three to the end of the second paragraph on page three and to approve the minutes as amended ([Minutes 10-30-17](#)). Motion prevailed 9-1 on a roll call vote.

Representative Wismer asked the Committee to consider the minority report for the 2017 Government Operations and Audit Committee Annual Report. She advised that the report was prepared and submitted before the Executive Board met and was advised to bring in front of the Committee. Senator Peters advised that there would need to be a motion to amend the agenda. Senator Nelson raised a point of order and quoted Rule 14 of the Interim Rules.

Representative Wismer moved, seconded by Senator Sutton, to amend the agenda to include the consideration of the minority report. Senator Nelson objected to the process of having to add the minority report to the agenda, stating it should be added to the minutes. Motion failed 4-6 on a roll call vote.

### **Item 1 – Department of Labor and Regulation to discuss the sources and uses of funds in the Unemployment Compensation Fund**

- [Letter to DLR Doc.2](#)
- [Unemployment Compensation Fund FY17 Doc.2a](#)
- [Labor Handout Doc.2b](#)

Marcia Hultman, Secretary of the Department of Labor and Regulation (DLR), was present to address the Committee. Ms. Hultman provided an overview of unemployment insurance. Employers pay a federal tax to administer the program and a state tax which is used to pay for the benefits. She explained that each state has its own unemployment fund account in the Federal Unemployment Trust Fund. There are strict federal guidelines that determine what the fund can be used for. Ms. Hultman explained the employer tax rates are based on their experience rating and range from 0% to 9.45%.

Ms. Hultman advised that the goal of the fund is to be solvent and have a balance to pay benefits during a recession, without over-collecting from employers. They use the average high cost multiple (AHCM) of 1.6 or higher to determine the fund is solvent. The AHCM determines if they will use the regular tax rate table or a reduced tax rate table.

Ms. Hultman provided historical balances of the Unemployment Insurance Trust Fund. The target balance for June 30, 2017 was about \$120 million, which the State did reach. Senator Cronin asked if money was allocated to the Future Fund in 2009 when the balance went negative. Ms. Hultman advised that it was still allocated and is not aware of any conversations of discontinuing. She advised that with the policies in place, they should remain solvent and not need the surcharges.

Representative Wismer asked for an explanation of the transfers in and transfers out on the [Unemployment Compensation Fund FY17](#) document. Emily Ward, Director of Administrative Services with DLR, advised she would review and follow up with an explanation. Representative Wismer also asked why they didn't have any nonoperating revenue, interest, penalties and overpayments in FY14. Ms. Hultman advised she will review and follow up with the Committee.

Ms. Hultman discussed the purpose and function of the Unemployment Insurance Advisory Council and described legislation being brought forward from the Council.

**Item 2 – Department of Revenue to discuss FY17 Single Audit findings and answer Committee questions**

- [Letter to Revenue Doc.3](#)
- [FY2017 Revenue Audit Findings Doc.3a](#)
- [Revenue Handout Doc.3b](#)

Andy Gerlach, Secretary of the Department of Revenue (DOR), was present to address the Committee. Mr. Gerlach reviewed the six findings and their corrective action plans from the FY17 audit completed by the Department of Legislative Audit (DLA). He advised the findings are focused on internal controls and it is an ongoing process. Toni Richardson, Director of Administration for DOR, advised the Capitalizing on Efficiency and Data Revenue (CEDR) system is an internally designed tax accounting system utilized by DOR.

Finding 2017-001 related to inadequate business tax internal controls within the business tax division. Mr. Gerlach discussed the challenge of recruiting and retaining important accounting and finance staff. He explained that from about April to November of last year, there was a vacant Management Accountant position. Mr. Gerlach described the steps taken to resolve the finding.

Representative Hunhoff asked what they were doing for monitoring and advised that they should bring a monitoring report in the future. Ms. Richardson explained that they are monitoring the payments and reconciliations. Ms. Richardson described the additional process implemented. Representative Wismer

asked about the lack of reconciliations. Mr. Gerlach advised that finding addressed two areas. Once they hired someone to fill the open manager position, they could go back and perform the necessary reconciliations. He advised that they have done a lot of cross-training to ensure that everything continues as it should. Ms. Richardson advised that they identified inherent risk in their decentralized processes and are working on documenting their processes and internal controls.

Representative Wismer asked if DLA is tracking key vacancies and using that to determine who gets audited. Tim Flannery, State Audit Manager with DLA, advised that management and staff turnover is considered when performing risk assessments and used to develop testing. Amy Macy, the auditor-in-charge of the DOR audit with DLA, advised that in this case, they already audit the areas that were affected by the staffing issues. Additional risk was also identified in cash receipting in other states, so they did additional testing to mitigate the risk.

Finding 2017-002 related to inadequate controls over cash receipting. Mr. Gerlach advised that they have developed a process for opening and documenting mail and checks received in the office. Ms. Richardson discussed the electronic log system, SharePoint, that they are currently using.

Senator Cronin asked if they hired more staff. Ms. Richardson advised that they did not hire additional staff, but shifted job duties. Any given day, three different people handle the mail by opening, restrictively endorsing and logging checks. They also have backup staff to help when needed.

Finding 2017-003 related to a lack of motor fuel manual return waivers. DOR now has the waiver form on their website. They have also started to record the approval letter on the CEDAR system. Representative Hunhoff asked why people choose to file manually. Mr. Gerlach explained that an overwhelming majority do file electronically and there are 70 wholesalers that file with them.

Finding 2017-004 related to insufficient evidence for approval of monthly revenue corrections. Mr. Gerlach explained that this had to do with a non-encrypted digital signature that was used after an employee left DOR. He advised that they have taken steps to remove all digital signatures and typed names from electronic documents. Ms. Richardson explained that they have taken steps to ensure that it doesn't happen again and they are doing spot checks.

Finding 2017-005 related to inadequate motor vehicle reconciliations. Mr. Gerlach explained that the DOR was not aware of the changes required by SDCL 32-11-29 until after the DLA audit. They have since updated the SDCars system and are now properly collecting and dispersing the funds. The reconciliations were completed.

Finding 2017-006 related to inadequate bank tax internal controls. Sufficient controls were lacking in entering banks or financial institutions onto the CEDAR tax system. One agent currently receives these new financial institutions and an accountant ensures that they are receiving what the Division of Banking sends them. Mr. Gerlach advised this is an evolving program and they are addressing the issues that have come up. He advised that they could use an additional employee versed in accounting and finance in this technical area.

Mr. Gerlach advised that they are developing an internal audit program for DOR. They discussed the complexity and growth of bank franchise division. Mr. Gerlach advised that they are focusing on training and development to help with retaining good employees.

**Item 3 – Attorney General’s Office to discuss the sources and uses of funds in the Attorney General Other Fund**

- [Letter to Attorney General Doc.4](#)
- [Attorney General Other Fund FY17 Doc.4a](#)

Marty Jackley, Attorney General, was present to address the Committee. He gave a general overview of the various other funds, including the Drug Control Fund, Consumer Division Fund and Records Check Fund and explained why they have the balances they do. Senator Cronin asked what is included in the capital outlay in FY2016. Kay McLain, with the Office of the Attorney General, advised that they did a computer overhaul about that time and will follow up with the Committee. Senator Cronin asked what attributed to the increase in travel from FY16 to FY17. Ms. McLain advised that they had a lot of travel for the Consumer Division. Mr. Jackley explained that he wants the Consumer Division to have a presence around the State, requiring additional traveling. Representative Hunhoff asked for a breakdown summary of the travel for FY17.

Senator Cronin asked for more information on the notable change in the Attorney General Other Fund Net Change line from FY16 to FY17. Mr. Jackley explained that this is a very volatile fund and can have many strings attached to it. Some years will have big settlements, and some won’t have any.

Representative Hunhoff asked about the future of the Law Enforcement Officers Training Fund. Mr. Jackley discussed the long-term plan of the fund. Law enforcement training is becoming very expensive, but is very important. He discussed the partnerships with the technical schools and the need for a fourth training class. Mr. Jackley also discussed the need for appropriate pay for officers.

**Item 4 – Unified Judicial System to discuss:**

- **Outreach efforts to implement the Juvenile Justice Public Safety Improvement Act**
- **The sources and uses of funds in the Court Automation Fund**
- [Letter to UJS Doc.5](#)
- [UJS Handout Doc.5a](#)
- [Court Automation Fund FY17 Doc.5b](#)

Greg Sattizahn, State Court Administrator with the Unified Judicial System (UJS), was present to address the Committee. He described the struggles and efforts taken to implement the Juvenile Justice Public Safety Improvement Act. The Juvenile Justice Public Safety Oversight Council has met with several groups to discuss barriers, partnered with Minnehaha County in a school justice partnership program, held training in Sioux Falls and plan to do additional training in Rapid City. Mr. Sattizahn advised that Juvenile Justice Annual Report was issued today which includes data for FY17. The Oversight Council continues to try and be more proactive rather than reactive. Representative Wismer voiced her concern about the lack of progress in rural areas. Senator Tapio spoke about the STAR Academy and issues arising since it’s closing.

Mr. Sattizahn discussed the Court Automation Fund (CAF) and the revenues flowing into it. The purpose of the CAF is to support technology in the courts and the interest of justice. He provided a history of the

revenue by type with the Court Automation Surcharge and Record Search Fee being the most predominate types of revenue. Mr. Sattizahn described the expenses paid from the CAF. The current balance of the fund is \$5.879 million and has been steadily stepping down each year. Several one-time expenditures have been approved for FY18 and were explained. Mr. Sattizahn described some of the upcoming updates to their Odyssey system.

Senator Peters asked for an explanation for the drastic change in the capital outlay. Mr. Sattizahn advised that he will follow-up with the Committee. Aaron Olson, Director of the Division of Budget and Finance with UJS, advised that the increase had a lot to do with the Law Library remodel and other courtroom remodels. Representative Steinhauer asked about the Victims Compensation Administrative Fee. Mr. Sattizahn explained that UJS receives 3% of fees collected in criminal cases. Mr. Olson advised that the transfers in line on [Doc.5b](#) showed the fee received for FY17 was \$8,926.55.

**Item 5 – Board of Education Standards to present the annual accountability report from the Technical Institutes (SDCL 13-48A-7)**

- [Letter to Education Doc.6](#)
- [DOE Handout Doc.6a](#)

Nick Wendell, Executive Director of the Board of Technical Education, was present to address the Committee. He discussed the transition from the Board of Education Standards to the Board of Technical Education. The Board has met four times and have identified several areas of focus.

Mr. Wendell discussed upcoming strategic planning efforts and advised that they are continuing to use the SD Techs Work 2021 plan. The plan focuses on three areas: product, people, and plant. Mr. Wendell discussed enrollment, graduation rates, and retention. Diane Stiles, Vice President at Lake Area Technical Institute (LAT), provided placement statistics collected for LAT. Mr. Wendell and Ann Bolman, President at Western Dakota Technical Institute (WDT), explained dual enrollment and the enrollment numbers used for allocations. Ms. Bolman discussed the success coach system they are using at WDT, as well as how they are funding it.

Mr. Wendell spoke about the challenges of retaining high quality staff in high need fields. There are shortages in these positions and staff are pulled in to the private sector. Ms. Bowman advised that they have experienced positive effects from the increase in salaries.

**Item 6 – Bureau of Administration to discuss:**

- **The sources and uses of funds in the Extraordinary Litigation Fund**
- **State agency records retention policies**
- [Letter to BOA Doc.7](#)
- [Extraordinary Litigation Fund FY17 Doc.7a](#)

Scott Bollinger, Commissioner of the Bureau of Administration (BOA), was present to address the Committee. He stated there is a Public Records Destruction and Retention Board (Board), of which he is a member. They meet annually and hear from agencies when changes need to be made to their retention policies. The Board does not tell them what to destroy or how long to retain documents. The BOA works with agencies to set up a records retention manual.

Senator Sutton asked if there would be anything stopping them from keeping records longer than federal requirements. Mr. Bollinger didn't think so. Senator Sutton asked if there should be more consistency between State agencies. Mr. Bollinger advised that most record retention across government typically all follow the same guidelines. Senator Sutton asked if it was possible to do more online storage, allowing them to store records longer. Mr. Bollinger advised that data shows less boxes are coming to Records Retention, leading to his supposition that more agencies are retaining records online.

Mr. Bollinger discussed the Extraordinary Litigation Fund and explained it was designed to address issues that were not covered under the Public Entity Pool for Liability (PEPL) fund. This fund pays for the cost of defending the State in lawsuits. They request appropriations to cover the costs associated with the finalized lawsuits.

**Item 7 – Department of Transportation and the South Dakota State Railroad Board to discuss:**

- **The operations of the State-owned rail line leased to Dakota Southern Railway Company (the Department of Transportation may invite the owner of Dakota Southern Railway Company)**
- **The sources and uses of funds in the Railroad Administration Fund**
- **The sources and uses of funds in the Railroad Trust Fund**
- [Letter to DOT Doc.8](#)
- [Railroad Other Funds FY17 Doc.8a](#)

Darin Bergquist, Secretary of the Department of Transportation (DOT), was present to address the Committee. He advised the Railroad Administration Fund is used to pay minor expenditures with maintaining a State-owned railroad and revenues come from rentals and fees charged. Senator Peters asked what the plan was for this fund with it having a negative fund equity balance. Mr. Bergquist advised that the current balance is at about \$120,000 and will follow up with the Committee regarding the history of the cash pooled with State Treasurer.

The Railroad Trust Fund is a larger fund set up to provide for the planning, enlarging, maintaining, equipping and protecting railroads in the State. The main expenditures from this fund include large maintenance and rehabilitation projects on the State-owned line as well as loans made by the Rail Authority. The two largest sources of income are lease payments from operators and interest collected on the loans. Mr. Bergquist will provide a narrative to explain the large differences in the fund.

Mr. Bergquist provided background information and updates on the rail lines. The State Rail Board meets on Wednesday and he discussed several items that were on the agenda. Representative Wismer is disappointed it has taken this long for the Rail Board to address the issues. Mr. Bergquist advised that DOT does not have regulatory authority over Federal Railroad Administration (FRA) matters. Representative Wismer asked where locals should go with issues. Mr. Bergquist advised that the issues would be directed to the proper areas. Senator Tapio asked if Mr. Bergquist believed that Dakota Southern was in violation of their lease at this time. Mr. Bergquist explained some of the terms of the lease agreement and acknowledged the FRA violations go against the lease. The Rail Board has the duty of determining if the violations fall under the termination provisions.

Senator Peters asked if any State statutes or procedures needed to be changed to ensure adequate rail lines. Mr. Bergquist advised that movement of freight is already heavily federally regulated and the State is the owner of the line. He explained that the State maintains the line for the benefit of the shippers who

use the line. The Rail Board struggles with the appropriate balance of doing what is best for the shippers on that line. Mr. Bergquist advised that day to day concerns can be brought to the DOT office and the purpose of the monthly Rail Board meetings is to provide a platform for shippers to bring forward their concerns.

**Item 8 – South Dakota Ellsworth Development Authority to discuss the sources and uses of funds of the Authority**

- [Letter to Ellsworth Authority Doc.9](#)
- [SD Ellsworth Other Fund Doc.9a](#)

Scott Landguth, Executive Director of the South Dakota Ellsworth Development Authority (Authority), was present to address the Committee. The Authority was created in 2009 to promote and protect the economic benefit of the Ellsworth Air Force Base. Mr. Landguth advised that the Authority receives a \$300,000 future grant from the State annually. Their budget is broken down into three areas: Waste Water Treatment Plant, Compatible Land Use and Operations.

Mr. Landguth advised that the unreserved fund balance includes federal and State funds received for the purchase of land. He explained that the operating grants and contributions include land donated to the Authority from the West River Foundation. The Authority has four contracted employees and a contract with the waste water treatment plant who employees six people.

**Item 9 – Bureau of Human Resources to discuss the sources and uses of funds in the State Employee Benefits Plan Fund**

- [Letter to BHR Doc.10](#)
- [State Employee Benefits Other Fund Doc.10a](#)

Mary Keeler, with the Bureau of Finance and Management (BFM), was present to address the Committee. Ms. Keeler advised that the State Employee Benefits Plan Fund is comprised of State employees' health and life plan, State employee flexible benefits plan and the State employee supplemental life insurance plan. The State employee health and life plan funding comes from employer contributions, employees covering dependents, former employees covered under Cobra, and retired employees. Expenses from this fund include all medical and pharmacy claims and administrative costs, including a \$25,000 life insurance benefit. The State employee flexible benefit plan funding comes from active and Cobra employees who choose to purchase the flexible benefit products and are 100% employee funded. These employee contributions are used to pay for insurance coverage and for claims against their spending accounts. The State employee supplemental life insurance plan funding comes from active employees choosing to purchase insurance for themselves or dependents. These funds pay for the coverage and are 100% employee funded.

Ms. Keeler discussed the net change in the State Employee Benefits Other Fund and stated that they experienced higher than anticipated claims. Representative Bartels asked if there was a stop-loss contract on the health insurance plan. Tom Strickland, Director of Employee Benefits with the Bureau of Human Resources, advised that there is not. They analyzed that about three years ago and determined they were better off having a strategic reserve. Ms. Keeler advised the reserve balance at the end of FY17 was \$12,047,140.

**Item 10 – Department of Human Services to discuss:**

- **Efforts made to implement Senate Bill 147, 2017 Session**
- **The impacts of the conflict free case management program**
- **The financial impact of the change to the school lunch program to Community Support Providers**
- [Letter to DHS Doc.14](#)
- [DHS Presentation Doc.11a](#)

Gloria Pearson, Secretary of the Department Human Services (DHS), was present to address the Committee. She explained that the Department of Social Services and DHS worked together to establish a rate setting methodology process in response to Senate Bill 147. A steering committee was formed and has met twice since June. She provided a list of the providers, organizations and State staff involved in the steering committee. The first thing that was important to the Steering Committee was to have criteria to prioritize which providers are reviewed. Ms. Pearson provided the providers identified for the 5-year plan. DHS expects to have a draft of the annual report to the Steering Committee as soon as tomorrow, with the final report being done on January 8, 2018.

Representative Hunhoff asked what process was used to come up with the rate used. Ms. Pearson advised that DHS walked through the current methodology and discussed geographical concerns. This increased the rate for the providers under DHS. They used cost reports from 2016 and they attribute the increase to an increase in costs, rather than the change in methodology. Senator Peters voiced her concern with using the same methodology that didn't seem to work. Ms. Pearson advised that they felt the methodology was appropriate for the one on one services and they feel they have improved it. They are in the first year and are learning from the experience.

Dan Cross, Executive Director of Community Support Providers of South Dakota, was present to address the Committee. He advised that their perception of the implementation of Senate Bill 147 has proceeded as planned. They wish the community support providers were at the top of the review list, but understand there needed to be a process. It is challenging because they have a workforce problem now. Representative Steinhauer advised Mr. Cross to actively monitor what happens in years 1 and 2 because that can affect what happens with them.

Darryl Millner, Director of the Division of Developmental Disabilities, spoke about conflict-free case management which was implemented June 1, 2016. Nearly 3,000 CHOICES and Community Training Services participants are now receiving conflict-free case management. The State was separated in to four regions covered by four different providers. Mr. Millner discussed the impacts of the conflict-free case management. Ms. Pearson feels that it is a better way of doing business for the people supported.

Mr. Millner provided a graph showing a history of the expenditures related to community support providers and conflict-free case management. He advised that the expenditure would have been the same in FY17 even if they had not implemented the conflict-free case management. Mr. Millner talked about a change in trends and they are seeing an increase in the number of discharges and terminations and a decrease in admissions.



Mr. Cross discussed how the conflict-free management has affected community support providers. The ideal situation for implementation would have had a budget neutral effect, but that has not been the experience of a lot of providers. There has been a negative impact from an operational standpoint. Some responses were to cut case managers internally and distributing the remaining case management duties to mid-level supervisors, direct care staff or other departments. Senator Cronin advised the providers to come up with ideas of how to do things differently.

Mr. Millner discussed the changes to the School Lunch Program and how it impacted the community support providers. Community support providers will need to cover their costs with other funds or raise their board rates to compensate for the decreased funding. Mr. Cross stated that the community support providers understand that this is not DHS's fault. This adds another financial hit to their system. Because of the loss of funding, a lot of providers had to cut cost in their already shrinking operating budgets. Finding other sources of funding has been very difficult.

**Item 11 – Follow-up information:**

- **Legislative Audit to provide information about the first GEAR UP grant**
- [DLA Follow-up to 10-5-17 meeting Doc.12](#)

Tim Flannery, State Government Audit Manager with the Department of Legislative Audit (DLA), was present to address the Committee. The [DLA Follow-up](#) memo provided answers and information regarding questions that were brought up during the October 5 & 6 Committee meeting. The first page discusses the first GEAR UP grant as well as Oceti Sakowin Education Consortium (OSEC). The table on the second page shows the Department of Education's (DOE) federal expenses taken from the State's accounting system. Senator Tapio asked if there were matching funds associated with this. Mr. Flannery advised that there were matching fund responsibilities, but they did not look at those for the Special Review. He discussed the requirements used for testing programs. The memo also included copies of contracts between DOE and OSEC.

Senator Peters advised that the Office of Inspector General has published their report and encouraged the Committee to review the report. Marty Guindon, Auditor General with the Department of Legislative Audit, advised that the report is consistent with DLA's findings.

**Item 12 – Future meeting date**

Representative Hunhoff wants to wait until session to set future meeting dates. She advised she would like to set up a schedule after the first meeting and asked members to review their calendars.

Senator Tapio discussed the existing issue with the railroad. He suggested forming an advisory committee to look in to it further if things don't get resolved within the near future.

A motion was made by Representative Bartels to adjourn, seconded by Senator Tapio. The motion passed on a voice vote.